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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/601,334   | 06/20/2003  | Steven S. Diamond    | 05127-000229        | 6990             |
| 22910  | 7590        | 09/30/2005           | EXAMINER            |                  |
| BANNER & WITCOFF, LTD.<br>28 STATE STREET<br>28th FLOOR<br>BOSTON, MA 02109-9601 |             |                      | HANEY, RICHAE LEE   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3765                |                  |

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/601,334

Applicant(s)

DIAMOND ET AL.

Examiner

Richale L. Haney

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/10/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the binding secured to the inner piece with adhesive and the sweatband secured to the crown with adhesive must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The term "approximately" in claims 27 and 35 is a relative term, which renders the claim indefinite. The term "approximately" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore, approximately 94% cotton and approximately 6% spandex are rendered indefinite because the metes and bounds of the claim are not defined.

***Claim Rejections - 35 USC § 103***

1. Claims 1 – 5, 8, 10, 11, 13 – 21, 24, 26, 28, 30 – 32, 34, 36, 38 – 41, 44 – 45, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (US 6,016,572) in view of Smith (5,033,122). The device of Park teaches headwear having a visor and a crown portion (Figure 1). The crown portion is comprised of a plurality of gores formed from a stretchable bias cut fabric (Figure 2 and Column 3, lines 30 - 33), a unitarily formed stretchable inner headband also cut on the bias (Column 3, lines 33 – 34), folded about itself, covering an filler piece of elastic material, (Figure 8, 6, 7) and secured to the lower edge of the crown with two rows of stitching evenly dispersed from the center and edges and parallel to the lower peripheral edge (Figure 8, 7, 15). The device of Park shows a elastic material binding strip covering the seams, secured to the seams with stitching allowing movement in the seams (Figure 2 – 1, 4; Figure 3, 5) where the stitching extends substantially parallel to and proximate each of the opposed longitudinal edges of the binding (Figure 4, 5), and stitching extending substantially parallel and proximate to the folded edges of the fabric making the seam (Figure 3, 2, 5). The device of Park lacks a separate fabric piece folded to form the sweatband

Art Unit: 3765

wherein the edges meet creating a seam. The device of Smith teaches an inner piece sweatband where the longitudinal edges are folded to meet with each other forming a seam (Column 4, lines 13 –14) and are covered with a binder strip (Figure 3, 24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Park, by using the flexible binding disclosed to cover the folded edges, that form a seam, of the sweatband as taught by Smith, in order to achieve the same flexibility attained in the gore seams in the sweatband seam. It is noted by the examiner that elastane is not specifically disclosed by Park; however it is well known to one of ordinary skill in the art that stretch is commonly achieved by incorporating elastic or spandex into yarn structure. Moreover it is also noted that the stitching, taught by Park, parallel with the edges of the crown would become parallel with the folded edges of the sweatband and binding, taught by Smith, when the sweatband of Park is replaced with the sweatband of Smith.

2. Claims 6, 22, 42 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 – 5, 8, 10, 11, 13 –21, 24, 26, 28, 30 – 32, 34, 36, 38 – 41, 44 – 45, 47 and 48 above, and further in view of Shin (US 6,477,715). The modified device of Park shows all of the claimed invention except for the binding being secured to the inner piece with adhesive. The device of Shin discloses a binding tape secured to an inner headband with adhesive (Figure 6, 10 and Column 3, lines 10 –12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Park, by incorporating adhesive

Art Unit: 3765

as a means for securing, as taught by Shin in order to achieve an inexpensive method of manufacture.

3. Claims 7, 23, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 – 5, 8, 10, 11, 13 – 21, 24, 26, 28, 30 – 32, 34, 36, 38 – 41, 44 – 45, 47 and 48 above, and further in view of Piche (US 5,317,761).

The modified device of Park shows all of the claimed invention except for the inner sweatband attached to a crown by means of adhesive. The device of Piche teaches a sweatband secured to the inner portion of a crown by means of adhesive (Column 3, lines 22 – 29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Park by attaching the inner sweatband by adhesive as taught by Piche in order to provide a removable attachment to prevent the headwear from becoming soiled (Column 1, lines 67 – 68).

4. Claims 25, 33, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 – 5, 8, 10, 11, 13 – 21, 24, 26, 28, 30 – 32, 34, 36, 38 – 41, 44 – 45, 47 and 48 above, and further in view of Nebeker (US 5,566,395). The modified device of Park shows all of the claimed invention except for the filler piece being formed from elastane. The device of Nebeker discloses a sweatband with a sponge core filler made from rubber or latex (Column 3, lines 60 – 63). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the device of Park by using an elastane core filler as taught by Nebeker in order to create a adjustable, stretchable headband.

Art Unit: 3765

5. Claims 27 and 35, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 – 5, 8, 10, 11, 13 – 21, 24, 26, 28, 30 – 32, 34, 36, 38 – 41, 44 – 45, 47 and 48 above, and further in view of McBride (US 6,502,245). The modified device of Park shows all of the claimed invention except for the inner sweatband being made from material that is approximately 94% cotton and 6% spandex. The device of McBride teaches a sweatband made from fabric that is 96% spandex and 4% spandex exhibiting similar characteristics with 2% less spandex (Column 2, lines 66 – 67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Park by utilizing a fabric comprised of approximately 94% cotton and 6% spandex as taught by McBride in order to utilize the absorbency of cotton and the stretch of fabric providing a comfortable fit for the wearer.

6. Claims 29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 – 5, 8, 10, 11, 13 – 21, 24, 26, 28, 30 – 32, 34, 36, 38 – 41, 44 – 45, 47 and 48 above, and further in view of Park (US 6,122,774). The modified device of Park shows all of the claimed invention except for the binding is cut in a bias direction. The device of Park shows binding tape cut on the bias covering the seams of a headwear article (Column 3, lines 42 – 43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Park by using bias tape as the binding to cover the seam as taught by Park in order to allow the binding to stretch with the sweatband fabric when force is applied.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bancroft (US 246,588) show a sweatband folded so that longitudinal ends form a seam.

Wilson (US 2003/0037365) shows a cap with material folded to cover a filler material adjoined to the lower peripheral edge of the cap.

Han et al. (US 2003/0172438) shows headwear with a sweatband folded so that the edges meet forming a seam.

Walsh (US 6,006,262) shows an article of headwear with a sweatband that has a fabric binding covering the folded seam of a sweatband wherein the sweatband is attached to the lower peripheral edge of a cap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney  
Patent Examiner  
Art Unit 3765  
September 14, 2005

RLH



JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700